



Ninety-Eighth Legislature - First Session - 2003  
**Introducer's Statement of Intent**  
**LB 571**

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**Chairperson:** David Landis  
**Committee:** Revenue  
**Date of Hearing:** March 12, 2003

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

The purpose of LB 571 is to amend the model escrow act, Neb. Rev. Stat. §§ 69-2702 and 69-2703, which was enacted following the signing of the Tobacco Master Settlement Agreement (MSA), in order to eliminate two unintended consequences of the act.

First, Neb. Rev. Stat. § 69-2702(10) which defines "unit sold" would be amended by deleting the words, "bearing the excise tax stamp of the state". The purpose of this amendment is to clarify that the escrow deposit is required of nonparticipating tobacco product manufacturers (NPMs) selling "roll-your-own" (RYO) tobacco to consumers in Nebraska. Currently, § 69-2703 requires that NPMs deposit money into a qualified escrow account at the statutory rate for each "unit sold". Section 69-2702(10) currently defines "unit sold" as the number of individual "cigarettes" sold by a tobacco product manufacturer in the state as measured by excise taxes collected by the state on packs or RYO tobacco containers "bearing the excise tax stamp of the state". The term "cigarette" is broadly defined in § 69-2702(4) to include RYO tobacco. However, pursuant to other provisions of state law, specifically § 77-4001 *et seq.*, while RYO is taxed, the RYO containers are not stamped and thus do not "bear the excise tax stamp of the state". Therefore, it appears that RYO is not included in the current definition of "unit sold". By deleting the words, "bearing the excise tax stamp of the state" from the definition of "unit sold", LB 571 would amend the model act to provide that the escrow deposit would be required of all NPMs selling cigarettes to consumers in Nebraska, including those selling RYO tobacco products.

Second, the "statutory cap provision" of the model escrow act, Neb. Rev. Stat. § 69-2703(2)(b)(ii), would be amended to eliminate an unintended consequence of the original language. The amendment is necessary to accomplish the fundamental purpose of the model escrow act which is to ensure that companies with whom the state has not settled potential claims (NPMs) are required to post escrows that provide a meaningful fund from which the state can recover damages in the event it obtains a judgment. The amendment also eliminates unintended disparities in the obligations of NPMs.

As stated above, the model escrow act requires NPMs to make escrow payments at a statutory rate or a fixed number of cents per “unit sold”. The statutory rate was calculated to approximate the MSA payment on a per-stick basis. However, the “statutory cap provision” currently permits an NPM to obtain a refund “to the extent that a tobacco product manufacturer establishes that the amount it was required to place in escrow in a particular year was greater than the State’s allocable share of the total payments that such manufacturer would have been required to make in that year under the MSA”. The purpose of this provision was to make sure that the financial obligations on the NPMs were not more onerous than the burdens on participating manufacturers joining the MSA which might provide the basis for an equal protection challenge to the model escrow act. However, as a practical matter the “statutory cap provision” has had a dramatic and material affect on the obligations of some NPMs and has itself been the focus of constitutional objections. Because the “statutory cap provision” as currently written focuses on a state’s allocable share of the MSA payments, experience has demonstrated that those NPMs that concentrate their sales in a single state or a few states, particularly a few states with small allocable shares of the total MSA payments (like Nebraska), can obtain a refund of the vast majority of their NPM deposits. The “statutory cap” amendment proposed in LB 571 still allows a refund if the NPM can establish that it paid more into a qualified escrow account than it would have paid under the MSA but deletes all reference to the allocable share of a particular state. Thus the amendment would avoid the unjustified and inequitable refunds in the current “statutory cap” provision.

**Principal Introducer:**

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**Senator Jim Jensen**